

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made as of this 16 day of November, 2006, by and among the County of Santa Clara ("County"), the Santa Clara County Financing Authority ("SCCFA"), the Silicon Valley Theatre Financing Corporation ("SVTFC"), sometimes collectively referred to as the "County Parties," and the City of San Jose ("City") and the Redevelopment Agency of the City of San Jose ("Agency"), sometimes the City and Agency are collectively referred to herein as the "City Parties." This Agreement shall also constitute the settlement agreement between the City and County for the mitigation of transportation impacts arising from the North San Jose Area Development Policies Update ("NSJ Project.")

RECITALS

- A. The County, City and Agency previously entered into an Amended and Restated Agreement among the Redevelopment Agency of the City of San Jose, the County of Santa Clara, and the City of San Jose dated May 22, 2001 ("May 2001 Agreement"). The May 2001 Agreement remains in effect, and nothing herein is intended to amend that May 2001 Agreement except that Section VII, Paragraph I, Subpart 7, of the May 2001 Agreement, respecting the annexation of County pockets, shall now be read and interpreted in conjunction with that which is set forth in this Agreement.
- B. The County Parties entered into various agreements with several private parties to construct and operate a theater at the County's fairgrounds property ("Fairgrounds").
- C. On August 2, 2004, the City Parties filed a Complaint in Santa Clara County Superior Court, Case No. 104CV024291 ("Case No. 024291" or "Fairgrounds Litigation"), seeking a judicial determination as to whether the County's approval of the theater project at the Fairgrounds violated the May 2001

Agreement. This complaint set forth claims for declaratory relief against the County, and preliminary and permanent injunction against the County Parties.

- D. On or about October 14, 2004, the City Parties filed a First Amended Complaint in Case No. 024291, setting forth a claim for declaratory relief against the County, and interference with contractual relationship against SCCFA and SVTFC.
- E. On or about October 20, 2004, the venue was changed to the San Mateo County Superior Court, and this civil action was later transferred and assigned Case No. CIV442629 ("Case No. 442629").
- F. On December 13, 2004, the City Parties filed a Second Amended Complaint in Case No. 442629, setting forth claims for declaratory relief against the County, interference with contractual relationship against SCCFA and SVTFC, breach of contract against the County, petition for alternative and peremptory writs of mandamus against the County, and petition for writ of administrative mandamus against the County. On February 28, 2005, the County Parties filed an Answer to this Second Amended Complaint, and later on March 3, 2005, filed an Amended Answer.
- G. On April 28, 2005, the County filed a Cross-Complaint in Case No. 442629, setting forth claims for breach of contract, breach of the implied covenant of good faith and fair dealing, and intentional interference with prospective economic relations against the City Parties. On or about July 13, 2005, the City Parties filed an Answer to this Cross-Complaint.
- H. On January 9, 2006, the Court of Appeal of the State of California, First Appellate District, reversed the November 22, 2004 Superior Court Order granting County Parties' special motion to strike as to the City Parties' injunction cause of action in the original August 2, 2004 complaint.

- I. On February 16, 2006, the San Mateo County Superior Court granted the County Parties' Motion for Summary Judgment in Case No. 442629, and issued an Order that all claims alleged in the Second Amended Complaint are adjudicated in favor of the County Parties and against the City Parties. In a separate Order dated February 28, 2006, the San Mateo County Superior Court granted the City Parties' Motion for Summary Adjudication as to the First Cause of Action (breach of Paragraph VII(P)(3) of the May 2001 Agreement) and Fifth Cause of Action (intentional interference with prospective economic relations) of the Cross-Complaint. The City Parties' motion was denied as to the Cross-Complaint's remaining causes of action.
- J. On July 28, 2005, the County filed suit against the City in the Santa Clara County Superior Court, Case No. 105CV046005, entitled *County of Santa Clara v. City of San Jose, et al.* ("Case No. 046005" or "North San Jose Litigation"), alleging, *inter alia*, that the City's approval of the NSJ Project and certification of the North San Jose Area Development Policies Update Environmental Impact Report ("NSJ EIR") violated various provisions of the California Environmental Quality Act of 1970 ("CEQA"). This North San Jose Litigation was later consolidated with two separate actions filed by the City of Santa Clara and Redevelopment Agency of the City of Santa Clara, and the City of Milpitas, and the consolidated action continued under Case No. 046005.
- K. On March 2, 2006, a trial was held in the North San Jose Litigation. In the Notice of Decision issued on March 2, 2006, the Court held that there was not substantial evidence to support the City's determination that there were no feasible mitigation measures for impacts to transportation facilities under the jurisdiction or control of other public agencies. The Court further held that San Jose's findings were timely, that San Jose's findings concerning potable water supply were supported by substantial evidence, and that San Jose's findings that the NSJ Project would not have cumulative impacts on wastewater facilities were supported by substantial evidence. On March 28,

2006, a Judgment and a Peremptory Writ of Mandate were entered in accordance with the Notice of Decision in the North San Jose Litigation.

- L. The County Parties and City Parties desire to settle and compromise all claims and defenses that were asserted in the Fairgrounds Litigation. The City Parties and the County further desire to settle and compromise all claims and defenses that were asserted in the North San Jose Litigation.

ACCORDINGLY, THE PARTIES AGREE AS FOLLOWS:

1. Resolution of the Fairgrounds Litigation

a. Entry of Judgment

In regard to the Second Amended Complaint in Case No. 442629, the City Parties agree to allow Judgment to be entered in favor of the County Parties against the City Parties respecting the February 16, 2006 Court Order granting the County Parties' Motion for Summary Judgment. The City Parties waive any appeal, and the County Parties waive their costs of suit and attorneys' fees respecting such judgment.

b. Dismissal of County Cross-Complaint

The County agrees to execute a request for dismissal with prejudice of its Cross-Complaint as to all cross-defendants, including the City Parties, within two weeks from the date of this Agreement.

c. Waiver of Claims and Damages

The County Parties hereby waive any and all claims or damages relating to or arising out of the Fairgrounds Litigation.

d. Payments by City and/or Agency

The City and/or Agency shall contribute the sum of \$22.5 million to County in three (3) equal installments of \$7.5 million to be used towards a community project that has been identified as the construction of a County Crime Laboratory, seismic upgrades to Superior Court or Valley Medical Center facilities, or seismic upgrades of other existing facilities that would benefit the citizens of City. The first payment shall be made no later than July 1, 2007; the second payment shall be made no later than July 1, 2008; and, the third payment shall be made by no later than July 1, 2009. It is the intent of the City and Agency that these payments will be made out of Agency bond funds. It is understood that if Agency bond funds are not available when installment payments are due, the City and/or Agency shall nevertheless make each installment payment from other sources of their choosing. It is further understood that these contributions shall be made in addition to any pass-through or delegated fund payments contained in the May 2001 Agreement.

The contribution of the funds set forth in this paragraph (d) shall be expressly contingent upon the execution of separate settlement agreements between the City of San Jose, the City of Santa Clara, the Santa Clara Redevelopment Agency, and the City of Milpitas to resolve the consolidated North San Jose Litigation. The County agrees to provide its best efforts to achieve final resolution of the consolidated North San Jose Litigation through executed settlement agreements between City Parties and the Cities of Milpitas and Santa Clara.

e. Annexation of County Pockets

In terms of the annexation of existing County Pockets (or urban unincorporated "islands") of unincorporated land that are scattered throughout the City's Urban Service Area, the parties agree as follows:

i. Annexation of County Pockets of 150 Acres or Less

City shall immediately initiate a process leading to the consideration by City's City Council of the annexation of all such existing County Pockets of 150 acres or less, and the City shall make good-faith efforts to complete all such County Pocket annexations by April 15, 2011. The respective parties recognize that legislative changes could affect the City's ability to annex such County Pockets, and that City shall not be held liable or responsible for delays or inabilities directly created by or resulting from changes in applicable State legislation. The County agrees that, in order to facilitate the processing of these annexations, it shall absorb the usual County costs associated with preparing annexation maps and providing Assessor's and Surveyor's reports, for which the County normally charges fees to the annexing entity. County shall pay for any LAFCO work and fees related to such annexations. County shall further pay any State Board of Equalization fees related to such annexations.

ii. Annexation of County Pockets Greater than 150 Acres

a) City will use good-faith efforts to initiate the processing of annexations for such existing County Pockets of greater than 150 acres by April 15, 2011, by commencing the processes necessary for the City Council to consider adoption of a Specific Annexation Plan for each such pocket subject to all applicable conditions and requirements of California law. The respective parties recognize that legislative changes could affect the City's ability to process or annex such County Pockets as contemplated herein, and that City shall not be held liable or responsible for delays or inabilities created by or resulting from changes in the applicable State legislation.

b) Each Specific Annexation Plan shall include estimated dates for the following (i) when pre-zoning will

be completed; (ii) when information regarding a comparison of services and charges will be mailed to property owners and registered voters; (iii) at least two community information meetings to be held; (iv) when the City will prepare and submit an annexation map to LAFCO; (iv) when the City Council will consider formal initiation of annexation by resolution; and (v) when the City will hold a protest hearing, if necessary. The City shall comply with the Cortese Knox Hertzberg Local Government Reorganization Act, and either consider immediate termination of the annexation proceeding, immediate completion of annexation without voter election, or immediate approval of annexation subject to voter election with an attempt to hold said election as soon as possible thereafter. An adverse election result for approval of annexation of any County Pocket shall relieve City from any further obligations under this Agreement to seek annexation of said County Pocket, unless there is a subsequent change in state law that would allow for annexation of said County Pocket without an election.

iii. The County shall cooperate with the City by providing, at the County's sole cost and expense, information that is reasonably necessary in order for the City to prepare a comparison of services and charges to be mailed to property owners and registered voters. The County shall provide to the City such information within a reasonable time following receipt of the City's request for such information.

iv. The parties shall meet and confer, pursuant to the provisions of Revenue and Taxation Code §99 and any other applicable California law, to discuss the sharing of revenues from the County pockets subject to annexation.

v. Force Majeure Provision

A court order, judgment, administrative proceeding, litigation, or legislation that prohibits the annexations of pocket(s) contemplated herein shall excuse the City's annexation obligation/performance under this Agreement. Any court order,

administrative proceeding, judgment, litigation, or legislation that delays the annexation of pocket(s) contemplated herein will affect the City's compliance with the April 15, 2011 deadline, but City shall complete the annexations as soon as possible subject to any and all legal requirements caused by the delay.

2. Resolution of the North San Jose Litigation

a. The NSJ EIR outlines a number of proposed improvements for the Montague Expressway within the City to mitigate traffic impacts from the NSJ Project. The implementation of these improvements is scheduled to occur during specified phases of the NSJ Project as described in the NSJ EIR. In its Findings for the NSJ Project, Resolution No. 72768, the City Council determined that the NSJ Project included a comprehensive package of roadway improvements (including upgrades to freeway, expressway, and local street facilities). The Findings' Mitigation Monitoring and Reporting Program holds that the City Department of Public Works will ensure implementation of the identified mitigation as described in the NSJ EIR based upon conditions and commitments included in the Final Public Works Clearance for development within the project area. The Mitigation Monitoring and Reporting Program further holds that 85% of all infrastructure mitigation for any individual phase (and all infrastructure for any previous phase) must be built or its implementation reasonably assured prior to issuance of building permits for any subsequent phase.

b. The County, City, and Agency agree to settle the North San Jose lawsuit as described herein conditioned on the following:

i. City Constructed Projects.

In and as a part of the implementation of Phase I of the NSJ Plan, City shall complete and fund mitigations as follows:
Montague Expressway widening to 8 lanes between Lick Mill

and Trade Zone, all portions of the Expressway regardless of City boundaries, including Interchange modifications at I-880 and the Trimble flyover; City shall complete the McCarthy-O'Toole Interchange as a part of the implementation of Phase III of the NSJ Plan.

ii. City Funded Projects.

City shall fund up to an amount not to exceed \$11 million dollars, and County shall construct the Montague "base project" 8-lane improvements as identified in the Comprehensive County Expressway Planning Study, Implementation Plan - Montague Expressway Tier 1A project, specifically:

- (a) completion of Interchange modifications at I-680,
- (b) widening between I-680 and Park Victoria, and
- (c) any widening remaining to be done between Capitol and I-680.

City shall provide such funding no later than June 30, 2010. County shall make a good faith effort to complete all of these improvements within 5 ½ years of receipt of City's funds so long as City's \$11 million contribution is sufficient to cover the improvements or alternate funds are available to complete the improvements.

iii. Montague/Mission/101 Interchange Project.

County and City agree, to the extent allowed by law, to continue their support for inclusion in the Valley Transportation Plan 2030 ("VTP 2030 Plan") the reconstruction of the interchange at Montague and Highway 101, with improvements to Mission College Boulevard as identified in the Comprehensive County Expressway Planning Study, Implementation Plan - Montague Expressway, Tier 1B project ("Montague/Mission/101

Interchange Project"). The County and City also agree that this is a high priority for State Transportation Improvement Program ("STIP") funding. County shall be solely responsible for all planning and design activities related to the Montague/Mission/101 Interchange Project; provided, however, that County's financial obligations for the Montague/Mission/101 Interchange Project shall not exceed the amounts set forth in this Section 2.b.iii. Such activities shall include, but not be limited to, the completion of the Project Study Report ("PSR") estimated to cost \$500,000 and the submission of such PSR to Caltrans within 1 year of the effective date of this Agreement. On or before June 30, 2010, County shall fund the design work for the construction of the Montague/Mission/101 Interchange Project, as identified in the Expressway Study and as contemplated in the PSR prepared in accordance with this Settlement Agreement. The design work shall be completed on or before June 30, 2014. In no event shall County's funding responsibility for the design work exceed \$1,500,000.00. If funding for the construction of the Montague/Mission/101 Interchange Project is not available on or before July 1, 2014, City Parties shall pay \$1,500,000 to County, and County shall allocate that \$1,500,000 for construction of the Montague/Mission/101 Interchange Project in conformity with the PSR and such other design work as may be necessary to improve the intersection for the ultimate interchange improvements at Highway 101 and Montague Expressway.

iv. San Tomas at Stevens Creek Widening Project.

County and City agree that STIP funding to extend the limits of the mitigation project for San Tomas Expressway widening to 8 lanes between Moorpark (at the south) and El Camino Real (at the north) is a high priority. Commencing immediately and until such time as funding is secured, VTA representatives from County and City shall take all lawful actions to support the inclusion of the widening of San Tomas Expressway to 8 lanes between Moorpark and El Camino Real, as identified and

described in the Expressway Study in the VTP 2030 plan, as a high-priority item for STIP funding.

c. In light of City Parties' commitments identified in Paragraph 2(b) above, County agrees to accept the NSJ Project's transportation impacts on transportation facilities under the County's jurisdiction or control without further mitigation from City Parties.

d. County shall take all reasonable steps necessary to resolve the North San Jose Litigation in a manner that will allow the NSJ Project to proceed, including, but not limited to, supporting a motion to set aside the March 28, 2006 Judgment in Case No. 046005, discharge of the Peremptory Writ of Mandate, and dismissal of Case No. 046005. County shall neither require nor insist that City Parties set aside any of their existing approvals or circulate any new environmental documents for the NSJ Project.

3. No Admission of Liability

The parties agree that this Agreement is part of a compromise and settlement of disputed claims. The parties further acknowledge and agree that this Agreement shall not be construed or deemed to be evidence of any admission of any fact, matter or thing.

4. Waiver of Costs

The parties agree to waive all costs, fees, or sanctions against one another respecting the Fairgrounds Litigation and North San Jose Litigation.

5. Joint Statement

The parties have previously agreed on a joint statement regarding this Agreement.

6. Governing Law, Forum, and Jurisdiction

a. This Agreement, respecting the resolution of Case No. 442629, shall be interpreted in accordance with and covered in all respects by the laws of the State of California, and the respective parties submit to the exclusive jurisdiction and venue of the San Mateo County Superior Court, the Honorable Mark Forcum, for purposes of interpretation and enforcement. In the event Judge Forcum is no longer sitting on the San Mateo County Superior Court bench at the time any issue regarding interpretation or enforcement arises, then the parties agree to submit the matter to a Judge selected by the Presiding Judge of the San Mateo County Superior Court.

b. This Agreement, respecting the resolution of the North San Jose Litigation, shall be interpreted in accordance with and covered in all respects by the laws of the State of California, and the respective parties submit to the exclusive jurisdiction and venue of the Santa Clara County Superior Court, the Honorable Leslie Nichols, for purposes of interpretation and enforcement. In the event Judge Nichols is no longer sitting on the Santa Clara County Superior Court bench at the time any issue regarding interpretation or enforcement arises, then the parties agree to submit the matter to a Judge selected by the Presiding Judge of the Santa Clara County Superior Court. To the extent that any dispute between City Parties and County regarding the North San Jose Litigation involves the City of Santa Clara and the separate Settlement Agreement entered into between City Parties, County, the City of Santa Clara, and the Redevelopment Agency of the City of Santa Clara, then the resolution provisions of that separate Settlement Agreement shall prevail.

7. Integration

The parties agree that the terms of this Agreement are contractual, and not mere recital, and constitute a fully binding and complete agreement between the County and the City

Parties. Except for the settlement agreement between the City Parties, City of Santa Clara, Redevelopment Agency of the City of Santa Clara, and County of Santa Clara in the North San Jose Litigation, which is intended to be consistent with the provisions of this Agreement with respect to the North San Jose Litigation, this Agreement supersedes any and all prior or contemporaneous agreements, representations, and understandings of and between the parties on those matters addressed in this Agreement. The parties understand that the terms of this Agreement may not be altered, amended, modified or otherwise changed in any respect of particular except by a writing duly executed by all of the parties hereto.

8. Construction and Interpretation

The parties, through their counsel, cooperated in the drafting in preparation of this Agreement. Hence, in any construction to be made of this Agreement, the same shall not be construed against any party. Further, the titles and headings of sections of this Agreement are for convenience of reference only and shall not affect the construction of any provision of this Agreement. The terms 'include', 'including' and similar terms shall be construed as though followed immediately by the phrase 'but not limited to.'

9. Severability

In the event that, any time subsequent to the execution of this Agreement, any portion or provision of it is found to be illegal, invalid, unenforceable, nonbinding or otherwise without legal force or effect, the remaining portion(s) will remain in force and be fully binding.

10. Counterparts

This Agreement may be executed by the parties in counterparts.

11. Additional Acts

The parties agree to do such acts and execute such documents as are necessary to carry out the provisions and purposes of this Agreement.

12. Notice

All notices and other communications required or permitted to be given under this Agreement shall be in writing and shall be personally served or mailed, postage prepaid and return receipt requested, addressed to the respective parties as follows:

To County

Parties:

County of Santa Clara
County Executive
70 West Hedding Street
11th Floor, East Wing
San Jose, California 95110

To City:

City of San Jose
City Manager
200 East Santa Clara Street
17th Floor Tower
San Jose, California 95113

To Agency:

Redevelopment Agency of the City of San Jose
Executive Director
200 East Santa Clara Street
14th Floor Tower
San Jose, California 95113

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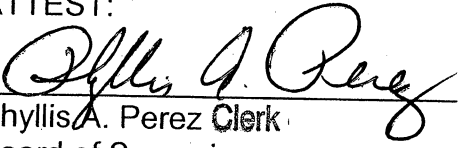
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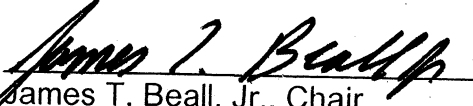
Notice shall be deemed effective on the date personally delivered or, if mailed, three (3) days after deposit in the mail.

IN WITNESS WHEREOF the parties have executed this Agreement upon the day and year above written.

ATTEST:


Phyllis A. Perez Clerk
Board of Supervisors


COUNTY OF SANTA CLARA


James T. Beall, Jr., Chair
Board of Supervisors

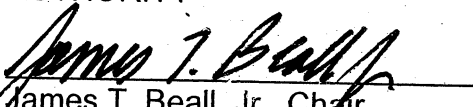
APPROVED AS TO FORM AND
LEGALITY:


Ann Miller Ravel
County Counsel

ATTEST:


Phyllis A. Perez
Secretary

SANTA CLARA COUNTY FINANCING
AUTHORITY


James T. Beall, Jr., Chair

APPROVED AS TO FORM AND
LEGALITY:


Ann Miller Ravel
County Counsel

APPROVED AS TO FORM AND
LEGALITY:

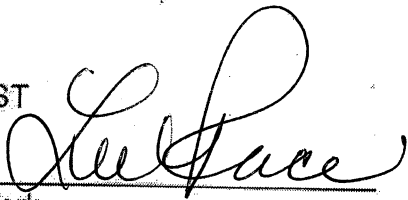

Ann Miller Ravel
County Counsel

SILICON VALLEY THEATRE
FINANCING CORPORATION


Patrick Love
Executive Director

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ATTEST


City Clerk

CITY OF SAN JOSE


Mayor

APPROVED AS TO LEGAL FORM:


City Attorney

ATTEST


Secretary

REDEVELOPMENT AGENCY OF THE
CITY OF SAN JOSE


Chairperson

APPROVED AS TO LEGAL FORM:


General Counsel